



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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October 1, 2015

William Branson
New Castle Correctional Facility
PO Box A
New Castle, IN 47362

Re: Formal Complaint 15-FC-227; Alleged Violation of the Access to Public Records Act by the Indiana Department of Child Services

Dear Mr. Branson,

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Child Services ("DCS") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* DCS has responded to your complaint via Deputy General Counsel, John Wood, Esq.. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 10, 2015.

BACKGROUND

Your complaint dated August 5 alleges that the Department of Child Services violated the APRA by denying you access to public records. On July 15, you sent a letter to DCS requesting a copy of the records reflecting the termination of an employee. As of the filing of your complaint, DCS had not responded.

On August 14, DCS responded to your formal complaint. DCS contends that you previously sent to the Putnam County DCS, also related to the same employee. However, the employee resigned over two years ago.

On July 7, DCS responded to your previous request. You were informed that DCS no longer has the documents requested and that you would need to contact the State Personnel Department ("SPD"). A supplemental letter was sent on July 16, which included all responsive records obtained from SPD.



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With regard to your present request, your request was received by DCS on July 22. DCS forwarded the request to SPD. However, DCS admits that it is uncertain if the new records request was a duplication of the previous records. DCS and SPD also encountered difficulty locating the physical personnel file.

After the filing of this complaint, DCS and SPD determined that the employee's resignation was not related to any discipline. In response, DCS denied your records request because no records exist responsive to the request.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The Indiana Department of Child Services is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(m)(1). Accordingly, any person has the right to inspect and copy DCS's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

The APRA provides that a public agency must acknowledge a request within seven (7) days of receipt. DCS does not deny that it did not promptly acknowledge your request. However, this was because of uncertainty about the nature of your request and the fact that DCS's previous response apparently crossed your new request in the mail. DCS did send out a letter on August 14 informing you that your request was denied.

This office has stated on several occasions that public agencies should be aware of deadlines stated within the APRA and do everything possible to comply with best practices. It is understandable that DCS could be uncertain due to the timing issues and your multiple submission of requests. Best practices would entail prompt acknowledgement of a request, even if a previous response crossed in the mail. However, because DCS provided the documents and did send out a response letter, albeit delayed, it appears as if it is making best efforts to comply with the access laws.

Regards,



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A handwritten signature in black ink, appearing to read "LH Britt", is written over a horizontal line.

Luke H. Britt
Public Access Counselor

Cc: John Wood, Esq.